

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HENDRIK BLOCK,

Plaintiff,

v.

K & K SISTERS, LLC, et al.,

Defendants.

Case No. 1:20-cv-01265-NONE-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT DEFENDANT K
& K SISTERS , LLC BE DISMISSED
FROM THIS ACTION FOR FAILURE TO
SERVE IN COMPLIANCE WITH RULE
4(m)

OBJECTIONS DUE WITHIN TEN DAYS

Plaintiff filed this action alleging violation of the Americans With Disabilities Act on September 3, 2020, against 3K Investment Company, LLC and K & K Sisters, LLC. (ECF No. 1.) The summons and an order setting the mandatory scheduling conference issued on September 8, 2020, and informed Plaintiff that he was to “diligently pursue service of the summons and complaint” and “promptly file proofs of the service.” (ECF No. 3 at 1.) Plaintiff was referred to Rule 4 of the Federal Rules of Civil Procedure regarding the requirement of timely service of the complaint. (Id. at 1-2.) Further, Plaintiff was advised that “[f]ailure to comply may result in the imposition of sanctions, including dismissal of unserved Defendants.” (Id. at 2.)

Plaintiff filed a first amended complaint on October 19, 2020, adding Defendant Jack Terzian as a defendant and the summons issued on October 20, 2020. (ECF Nos. 4, 5.) On November 17, 2020, an order issued requiring Plaintiff to notify the court of the status of service

1 on the defendants. (ECF No. 6.) Plaintiff filed a notice of service and requested the scheduling
2 conference be continued on November 20, 2020. (ECF No. 7.) Plaintiff sought an additional
3 thirty days to serve the summons and complaint. (Id.) On November 20, 2020, an order issued
4 granting Plaintiff's request and he was provided with an additional thirty days to serve the
5 complaint. (ECF No. 8.) More than thirty days have passed and Plaintiff has not filed a proof of
6 service showing that Defendant K & K Sisters, LLC has been served with the summons and
7 complaint.

8 On January 13, 2021, an order to show cause issued requiring Plaintiff to show cause
9 why Defendant K & K Sisters, LLC should not be dismissed from this action for failure to serve
10 in compliance with Rule 4(m) of the Federal Rules of Civil Procedure. On January 18, 2021,
11 Plaintiff filed a response to the order to show cause. In the response, Plaintiff states that he has
12 been unable to serve Defendant K & K Sisters, LLC and the parties that have been served have
13 reached a tentative settlement agreement that will resolve this matter in its entirety. Plaintiff has
14 no objection to the dismissal of Defendant K & K Sisters, LLC from this action without
15 prejudice.

16 Rule 4(m) addresses the time requirements for service of the complaint in civil cases.
17 The Rule provides:

18 If a defendant is not served within 90 days after the complaint is filed, the court--
19 on motion or on its own after notice to the plaintiff--must dismiss the action
20 without prejudice against that defendant or order that service be made within a
specified time. But if the plaintiff shows good cause for the failure, the court must
extend the time for service for an appropriate period.

21 Fed. R. Civ. P. 4(m). Here, Plaintiff has not served Defendant K & K Sisters LLC within the
22 time period provided by Rule 4(m) and has not shown good cause to extend the time for service
23 of process.

24 Accordingly, IT IS HEREBY RECOMMENDED that Defendant K & K Sisters, LLC be
25 dismissed from this action for failure to serve the complaint in compliance with Rule 4(m) of the
26 Federal Rules of Civil Procedure.

27 This findings and recommendations is submitted to the district judge assigned to this
28 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within **ten (10)**

1 **days** of service of this recommendation, any party may file written objections to this findings
2 and recommendations with the court and serve a copy on all parties. Such a document should be
3 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The district
4 judge will review the magistrate judge’s findings and recommendations pursuant to 28 U.S.C. §
5 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may
6 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
7 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8
9 IT IS SO ORDERED.

10 Dated: **January 19, 2021**


UNITED STATES MAGISTRATE JUDGE